

REMARKS

In the Amendment After Final filed January 19, 2010, Applicant amended claim 46 to recite, in pertinent part, "the cosmetic product comprises a body care product, excluding depilatory waxes, epilatory waxes, and waxes having the ability to remove hair." Prior to the amendment, this portion of claim 46 recited: "the cosmetic product comprises a body care product, excluding depilatory waxes." Thus, the amendment to claim 46 added the following recitation: "epilatory waxes, and waxes having the ability to remove hair."

The Advisory Action issued February 3, 2010, includes the following assertions:

Applicants have amended the claims to include new matter which is not supported by the specification. The recitation of "epilatory waxes, and waxes having the ability to remove hair" is nowhere disclosed in the specification and applicant has not identified where the recitation is supported.

Contrary to the assertions, Applicant respectfully submits that the recitation added to claim 46 is fully supported in the application as originally filed. According to the M.P.E.P., when evaluating whether an amendment to a claim is supported by the originally-filed application, "the fundamental factual inquiry is whether the specification conveys with reasonable clarity to those skilled in the art that, as of the filing date sought, applicant was in possession of the invention as now claimed." § 2163.02 (citations omitted). Further, the M.P.E.P. advises that "[t]he subject matter of the claim need not be described literally (i.e., using the same terms or *in haec verba*) in order for the disclosure to satisfy the description requirement." Id.

Applicant respectfully submits that the originally-filed application conveys with reasonable clarity to those skilled in the art that, as of the filing date of the application,

Applicant was in possession of the subject matter in the recitation added to claim 46 by the amendment. The originally-filed application includes the following paragraph:

The object of the invention, according to a first aspect *inter alia*, is a process for the application of a cosmetic product, including a body care product, excluding depilatory waxes, this product being contained in a packaging device, the process including the following steps: . . .

Specification at p. 1, lines 18-21 (emphasis added). Further, originally-filed claims 1 and 9 recited, *inter alia*, “a body care product, excluding depilatory waxes.”

Applicant respectfully submits that those skilled in the art relating to body care products would understand that “depilatory waxes” are waxes used to remove hair from the body. Applicant notes that “depilatory” is defined as “[h]aving the capability to remove hair,” and “[a] preparation that is used to remove unwanted hair from the body.” *The American Heritage College Dictionary* 373 (3rd ed. 2000). Accordingly, “depilatory waxes” are waxes that have the ability to remove hair, or waxes used to remove unwanted hair from the body. Thus, one skilled in the art would understand that the originally-filed application, which describes “a body care product, excluding depilatory waxes,” supports the recitation of “a body care product, excluding . . . waxes having the ability to remove hair.”

Moreover, one skilled in the art would understand that “depilatory waxes” include “epilatory waxes.” For example, referring to U.S. Patent No. 6,174,319 B1 to Desnos, which the Examiner relies on as purportedly supporting the rejection of claims 46-75 under 35 U.S.C. § 102(b) or § 103(a) included in the final Office Action, Desnos discloses that “epilatory waxes” are waxes used to remove unwanted hair from the body. Thus, one skilled in the art would understand that the originally-filed application,

which describes "a body care product, excluding depilatory waxes," supports the recitation of "a body care product, excluding . . . epilatory waxes"

For at least the above-outlined reasons, the originally-filed application fully supports the recitation of "a body care product, excluding . . . epilatory waxes, and waxes having the ability to remove hair." Therefore, contrary to the assertions in the Advisory Action, the recitation added by the Amendment After Final filed January 19, 2010, is not new matter.

Conclusion

For at least the reasons outlined in the Amendment After Final filed January 19, 2010, as supplemented herein, claims 46-75 of the present application are allowable. Therefore, Applicant respectfully requests reconsideration of this application, entry of the amendment to claim 46, withdrawal of the claim rejections, and allowance of claims 46-75.


If the Examiner believes that a telephone conversation might advance prosecution of this application, the Examiner is cordially invited to call Applicant's undersigned attorney at (404) 653-6559.

Please grant any extensions of time required to enter this Response and charge any additional required fees to our Deposit Account 06-0916.

Respectfully submitted,

FINNEGAN, HENDERSON, FARABOW,
GARRETT & DUNNER, L.L.P.

Dated: February 18, 2010

By: 

Christopher T. Kent
Reg. No. 48,216